

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44618
Docket No. MW-45660
22-3-NRAB-00003-190590**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(The Kansas City Southern Railway Company
(former Gateway Western Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign Bridge Tender R. Hart to overtime service operating the Pearl River Bridge to allow train traffic in Pearl, Illinois on March 3 and 4, 2018 and instead assigned junior employee L. Sibley thereto [System File 18 03 03 (019)/K0418-7634 GAT/].**
- (2) The Agreement was violated when the Carrier failed to assign Bridge Tender R. Hart to overtime service operating the Pearl River Bridge to allow train traffic in Pearl, Illinois on March 17, 2018 and instead assigned junior employee S. Lemons thereto [System File 18 03 17 (023)/K0418-7647].**
- (3) The Agreement was violated when the Carrier failed to assign Bridge Tender R. Hart to overtime service operating the Pearl River Bridge to allow train traffic in Pearl, Illinois on March 24 and 25, 2018 and instead assigned junior employee L. Sibley thereto [System File 18 03 24 (024)/K0418-7648].**
- (4) As a consequence of the violation referred to in Part (1) above, Claimant R. Hart shall now be compensated for seven and one-quarter (7.25) hours at his time and one-half rate of pay which totals two hundred eighty-two dollars and forty-nine cents (\$282.49).**

- (5) As a consequence of the violation referred to in Part (2) above, Claimant R. Hart shall now be compensated for six (6) hours at his time and one-half rate of pay which totals two hundred twenty-five dollars and ninety-nine cents (\$225.99).
- (6) As a consequence of the violation referred to in Part (3) above, Claimant R. Hart shall now be compensated for ten and one-quarter (10.25) hours at his time and one-half rate of pay which totals three hundred eighty-six dollars and seven cents (\$386.07).”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant in this matter is the same employee discussed in Third Division Award 44622. As further discussed in that award and in detail in Third Division Award 44621, the Claimant was one of three employees awarded Bridge Tender positions at Pearl, Illinois with Monday through Friday assignments and rotating call-out coverage every third weekend.

According to the Organization, the Claimant was the most senior of the three Bridge Tenders at Pearl. The dispute in this case is the Claimant’s assertion that his seniority entitled him to work weekend rotational call outs at Pearl worked by the junior Bridge Tenders.

The three Bridge Tender positions at Pearl were bid and awarded to the employees including the Claimant with the clear provisions that “Position is Subject to Call Outs”. At the time of the bidding, notification was given to the employees in

December 2017 that effective January 2, 2018 [emphasis added] (Carrier Exhibit A at 12):

“Coverage and calls for Pearl Bridge

Effective 1/2/2018

* * *

3. Weekend shifts (0700 Saturday Morning to 0700 Monday Morning) shall be covered on a call basis (See calendar for assigned weekend call schedule)

* * *

We note from Third Division Award _____ [Docket MW-45713] that the employee in that case (Sibley – one of the employees in this case that Claimant contends receive weekend call out overtime instead of him) was given and signed a “Shift acknowledgement schedule” specifically stating that in addition to the employee’s shift assignment hours “[i]n addition, I will be on call every third weekend beginning, December 30th starting at 0700 that morning thru January 1st until 0700” [emphasis added].

Thus, in December 2017, the Bridge Tender positions at Pearl were posted and awarded with the provision that (1) the positions were Monday through Friday schedules; (2) the positions were subject to call outs; (3) for weekend call out coverage there was a calendar for an assigned weekend call schedule; and a shift acknowledgment schedule clearly stated that the weekend on call schedule would be for “every third weekend”.

Through all of the above, as of December 2017 the Carrier made clear how weekend call outs would be handled for the three Bridge Tenders at Pearl – i.e., on a rotating basis. Prior to the claims filed in this matter (which first was filed by letter dated April 30, 2018 – Organization Exhibit A-1), no claim was filed asserting any impropriety in the bidding and awarding of the positions nor on the requirement for rotating weekend call outs. Given the circumstances, the claim arose in December 2017 with the posted call out conditions for the positions and that was not protested at the time. If there was a conflict with the seniority provisions of the Agreement, then the protest had to be over the postings, awarding and conditions of the weekend call out requirements and not the implementation of those conditions that went forward without protest. Under the unique circumstances of this case, the Organization cannot allow the bidding and awarding of the positions to occur and

then belatedly protest the impact of the establishment of the positions which should have been protested when those conditions were set in the bidding and awarding of the positions with the rotating weekend call out conditions attached.

“Where one party has lulled the other into thinking that clear language will not be enforced, then principles of estoppel and fundamental fairness require that the language cannot be applied until notice is given that the other party intends to rely upon the clear language.” Second Division Award 13681. That is what happened here.

Based on the above, the claim shall be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of December 2021.